

IN THE COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

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In the Matter of

FISK UNIVERSITY,

Petitioner/Appellant

)

) Appeal No. M2010-02615-COA-R3-CV

)

) On Appeal from the Judgment of the

) Chancery Court of Davidson County

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)

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BRIEF OF APPELLANT

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**Whether or not the Chancery Court abused its discretion by requiring that \$20 million of the \$30 million to be paid to Fisk University by the Crystal Bridges Museum be placed into a restricted and inaccessible endowment fund with the earnings to be used exclusively for the Alfred Stieglitz Collection.**

### **Arguments by Appellant:**

**1. Limiting the amount of proceeds which Fisk will have discretion to use to \$10 million based on a conclusion by the Chancery Court that such amount is sufficient to solve Fisk's financial problems is an abuse of discretion which violates the remand order of the Court of Appeals.**

**2. Limiting the amount of the funds which Fisk can use to solve its financial problems to \$10 million because of the Chancery Court's concern regarding "monetization" of the Collection is an abuse of discretion.**

**3. The establishment of a restricted endowment of \$20 million on the basis that such amount is necessary for the exhibition and utilization of the Collection for the study of art is an abuse of discretion.**

### **Relief requested from the Court of Appeals:**

Fisk University asks that the Court of Appeals end this case by approving the Crystal Bridges Museum agreements in the form as approved by the Chancery Court, and by striking from the ruling of the Chancery Court the requirement that any of the funds received by Fisk from Crystal Bridges Museum be used to fund an endowment which supports the Collection.

### **Concerning abbreviation references to the record**

The record in this matter consisted of 16 volumes, numbered sequentially, and of which the last three (Volumes XIV, XV, and XVI) are made up of the transcript of the trial. In addition, there are seven volumes containing trial exhibits, again numbered sequentially.

The following abbreviated references to the record are used herein:

R. followed by the volume number and page refers to the first thirteen volumes of the record.

Tr. followed by the volume number and page refers to the trial transcript volumes.

Ex. followed by a volume number and page refers to the volumes containing trial exhibits.

The deposition of Robert Workman is Exhibit 208 but is included as a separate document and its referred to as Workman Dep. with the page number.

## STATEMENT OF THE CASE

This is the second appeal of this case to the Court of Appeals from the Davidson County Chancery Court. The opinion of the Court of Appeals on the first appeal, dated July 14, 2009, contains a detailed summary of the development of the case up until that time, and that detail is adopted here. Georgia O’Keeffe Foundation (Museum) v. Fisk University, 312 S.W.3d 1 (Tenn. Ct. App. 2009).

### **Development of Matter Through First Appeal**

In this case, Fisk University (“Fisk”) petitioned the Chancery Court to approve two agreements between Fisk and Crystal Bridges Museum of American Art, Inc., a non-profit corporation which operates an art museum in Arkansas (“Crystal Bridges Museum”). The agreements provide that Fisk will transfer an undivided one-half interest in the Alfred Stieglitz Art Collection (the “Collection”) to Crystal Bridges Museum. The agreements also provide that Fisk and Crystal Bridges Museum will share the right to exhibit the art on an equal time basis, and they will generally share equally in the costs of caring for and preserving the Collection. At the same time as those agreements between Fisk and Crystal Bridges Museum were made, Alice Walton, Crystal Bridges Museum’s primary benefactor, committed to establish a \$1.0 million endowment to be used by Fisk to pay its costs associated with the exhibition and care of the Collection. This \$1.0 million endowment will only be established if the Crystal Bridges Museum agreements are approved by the Court and implemented by Fisk and Crystal Bridges Museum. Ex. 71, Vol. II, p. 159.

Approval of these agreements from the Chancery Court is necessary because the donor of the art, Georgia O’Keeffe, acting as executrix of the estate of her late husband, Alfred Stieglitz, imposed a number of conditions on the gift of his art to Fisk (the “O’Keeffe Conditions”),

including that Fisk exhibit the art in perpetuity and a no sale condition. The substantive issues in this case are governed by New York law. A New York statute, E.P.T.L. 8-1.1(2)(c), sets out the requirements which a petitioner must prove in order to obtain the approval of a court to change any of the specific conditions placed on a gift by the donor. This relief is generally referred to as *cy pres* relief.

The Georgia O'Keeffe Museum, located in Santa Fe, New Mexico was permitted to intervene in this case in the capacity of representative of the estate of Georgia O'Keeffe, and as successor to the Georgia O'Keeffe Foundation. The O'Keeffe Museum opposed the approval of the Crystal Bridges Museum agreements and also asked the Chancery Court to rule that the Collection should revert to the O'Keeffe Museum as a result of violations by Fisk of certain of the conditions placed on the gift.

The Attorney General of Tennessee was also permitted to intervene in the case claiming to represent the interests of the citizens of Tennessee.

On February 8, 2008, the Chancery Court granted a summary judgment motion of the O'Keeffe Museum and dismissed Fisk's petition. The Chancery Court ruled that there were three tests applicable to the qualification for *cy pres* relief under New York law and Fisk had the burden of establishing all three in order to receive the requested approval. They are:

- [1] The donor must have had a general charitable intent rather than a specific charitable intent in making the gift, as those terms are defined under New York law.
- [2] The donee must prove that compliance with one of more of the specific conditions imposed by the donor is impossible or impracticable.
- [3] The conditions, as changed by the court, must be those which in the judgment of the court most effectively accomplish the general purposes of the gift.

The Chancery Court ruled that Fisk did not, as a matter of law, meet the first test, because O'Keeffe had a specific charitable intent in making the gift. The Court also ruled that the



proposed changes which were required in the conditions to permit the Fisk/Crystal Bridges Museum transaction to be completed could not comply, as a matter of law, with the requirements of the third test of effectively accomplishing the general purposes of the gift. The Chancery Court declined to issue a ruling on the second test because that issue would require a trial to establish the facts before it could be resolved.

Fisk appealed. Overturning the trial court, the Court of Appeals ruled that:

- [1] the O’Keeffe Museum had no standing to participate as a party in this case;
- [2] the O’Keeffe Museum did not have a right of reversion in the Collection;
- [3] Fisk had met the first test because O’Keeffe had a general charitable intent in making the gift; and
- [4] the Chancery court erred in ruling on the third test because a proper resolution of that issue required a factual hearing.

The Court of Appeals remanded the case to the Chancery Court with instructions that the lower court determine whether or not compliance with O’Keeffe’s specific conditions was impossible or impracticable for Fisk. If the Chancery Court found in the affirmative on that issue, then the Chancery Court was directed to “*fashion a form of relief that most closely approximates Ms. O’Keeffe’s charitable intent.*” 312 S.W.3d at 20.

### **Development of Matter After the First Appeal**

Trial was held in Chancery Court on August 11-13, 2010. Following that trial, the Chancery Court ruled that Fisk had proved that compliance with O’Keeffe’s conditions was impracticable due to Fisk’s serious financial difficulties. Because of such difficulties, Fisk would likely cease operations if it did not receive a large infusion of cash, and if it ceased to exist it could not exhibit and care for the Collection. The Chancery Court also ruled that the Crystal Bridges Museum agreements, with amendments suggested by the Court, met the third test of most effectively accomplishing O’Keeffe’s general purposes. The Court, as a result, approved

the completion of the transaction with Crystal Bridges Museum. Mem. & Ord., Nov. 3, 2010, R. Vol. XIII, p. 1750; Supp. Mem. & Ord., Nov. 9, 2010, R. Vol. XIII, p. 1785.

In approving the agreements, however, the Chancery Court ruled that Fisk could have the discretionary right to spend only \$10 million of the \$30 million payment from Crystal Bridges Museum. The Court ruled that the remaining \$20 million was to be placed in an endowment, independent of Fisk, and the earnings paid to Fisk to be used exclusively to support the exhibition and preservation of the Collection and to implement a program of public education regarding the art. Under the ruling, Fisk would never have the right to access the principal of this endowment for any purpose or to use the earnings for any other purpose.

Fisk files this appeal in which it agrees with the Chancery Court rulings that Fisk had proven compliance with the second and third conditions listed above, but Fisk submits that it is an abuse of the Court's discretion to allocate only \$10 million to Fisk which it may use in its discretion and \$20 million which will be tied up for all time with the Collection. As a result, Fisk asks this Court to strike from the decision of the Chancery Court the limitations imposed with regard to the use of the \$30 million payment, thereby allowing Fisk to use all of the \$30 million payment in an appropriate way as determined by its Board of Trustees.

## STATEMENT OF FACTS

### Introduction

Fisk incorporates into this Statement of Facts the factual findings included in the prior opinion of the Court of Appeals in this matter. 312 S.W.3d at. 4-10. To those facts, Fisk adds the following:

### Crystal Bridges Museum Joint Ownership Agreement

On September 24, 2007, Fisk entered into an agreement with Crystal Bridges Museum to transfer an undivided one-half interest in the Stieglitz Art Collection to Crystal Bridges Museum, subject to approval by the Chancery Court. Ex. 79, Vol. II, p. 197. The proposed purchaser's art museum is located in Arkansas. Workman Dep., p. 12. Crystal Bridges Museum has the personal financial backing of Alice Walton, who considers her obligation to be binding. Workman Dep. p. 171. Alice Walton and members of her family and a family foundation have given \$317,000,000 to Crystal Bridges Museum for the development of the Museum. Crystal Bridges Museum has \$488,000,000 in assets, of which \$138,000,000 are liquid assets. Workman Dep. p. 172. The Museum will have 32,000 square feet of exhibition spaces. Workman Dep. pp. 295, 303-304.

There are two agreements between Fisk and Crystal Bridges Museum, one of which is the purchase agreement for the Collection and the other is a Joint Ownership Agreement setting out the terms and conditions of their shared ownership of the Collection. Ex. 79. This latter agreement includes the following provisions:

- A Collection Committee is established to make critical decisions with respect to the exhibition and preservation of the Collection.
- The Collection Committee shall enforce certain Overriding Conditions which will apply to the Collection. These include the requirement that [1] the Collection be known, in perpetuity, as the Alfred Stieglitz Collection; [2] no item in the

Collection may be sold or exchanged; and [3] the Collection shall be exhibited at all times in such manner as determined by the Collection Committee consistent with [a] providing access to the Collection for study and public appreciation, [b] preserve, protect and promote the integrity of the Collection, [c] safeguard and expand the artistic legacy of the artists represented in the Collection and [d] generally serve the best interests of the Collection.

- The Collection Committee is made up of five individuals, including the chief curator of Crystal Bridges Museum, the chief curator or museum director at Fisk, a conservator versed in the diverse media of the Collection, a noted scholar on American Modernism, and a person with significant experience in the art museum industry. The final three members are to be proposed by Crystal Bridges Museum, but must be approved by Fisk.
- Decisions of the Collection Committee must be consistent with the Overriding Conditions, in the best interest of the Collection, and in full accordance with the highest standard and best industry practices, and generally adhere to the guidelines of the Association of Art Museums.
- Consistent with the above standards, the Collection Committee will determine an appropriate rotation schedule for the art.
- The Committee will follow the dictates of best and accepted industry practice with regard to the limitation of the exhibit time of works on paper, so as to protect and preserve such works.
- The Collection Committee shall oversee the necessary conservation and restoration of the Collection with the costs to be shared equally.
- In the event either party wishes to sell their interest in the Collection, the other party will have a right of first refusal, and Fisk cannot sell its remaining interest in the Collection without the approval of the Davidson County Chancery Court.
- The Collection will be displayed as a unified and distinct grouping of works for a substantial majority of the time.

In the Chancery Court's Memorandum and Order of August 20, 2010, the Court stated that it had a number of concerns with regard to specific provisions of the Joint Ownership Agreement, and suggested certain changes be made in the agreement to make it more acceptable to the court. R. Vol. X, pp. 1321-1323. In its filing with the Chancery Court on October 8, 2010, Fisk advised the

Chancery Court that it and Crystal Bridges Museum had agreed to certain changes in the Joint Ownership Agreement to address those concerns expressed by the Chancery Court. R. Vol. XII, p.

1622. Some of the more significant changes are summarized as follows:

- (1) The original agreement provided that if either party could not pay for its share of any required expenses regarding the Collection and the other party advanced such costs, the amount advanced would be a loan secured by a security interest in the defaulting party's share of the Collection. This section was deleted.
- (2) The Agreement originally provided that the parties could place their respective 50% interests in a Delaware limited liability company. That section was deleted.
- (3) The original Agreement provided that disputes between the parties would be resolved by mediation and arbitration. This section was deleted.
- (4) A section of the Agreement was revised to provide that no transfer of any interest in the Collection by Fisk could be made without the approval of the Chancery Court.
- (5) The Agreement will be revised to include the following initial planned schedule for the 50% sharing arrangement: until September 2013, the Collection will be at Fisk; from the fall of 2013 through the summer of 2015, it will be at Crystal Bridges Museum; and from the fall of 2015 through the summer of 2017 it will again be at Fisk. Fisk and Crystal Bridges Museum intend that thereafter the Collection shall rotate between the institutions every two years, although the Collection Committee may set a different schedule for good reason.

### **Fisk's Financial Situation**

As proven at trial, Fisk University has serious financial problems. Its endowment has been reduced to approximately \$3.7 million, all of which is restricted and cannot be used for general operational purposes. Tr., Vol. XV, p. 277. Fisk has experienced an average annual operating deficit of approximately \$2.0 million over the last few years. Tr. Vol. XV p. 290. It had an operating deficit of \$1.6 million for the year ended June 30, 2009, and, at the time of the trial, Fisk was expected to sustain an operating deficit for the year ended June 30, 2010. Tr. Vol. XIV pp. 121-122, 283. According to the Southern Association of Colleges and Schools, the operating deficits of the size sustained by Fisk "*jeopardize the institution's ability to provide the stable resource base needed to sustain its mission.*" Tr. Vol. XV p. 283.

Fisk cannot survive and will be forced to close its doors unless it receives a large infusion of cash, such as the \$30 million it would receive from the proposed transaction with Crystal Bridges Museum. Tr. Vol. XV pp. 233, 306. A study of Fisk made by the Boston Consulting Group concluded that Fisk needs to raise \$5 to \$6 million a year. Tr. Vol. XV p. 227, Ex. 206, Vol. VII, p. 909. Fisk cannot raise those sums of money without the \$30 million cash infusion. Tr. Vol. XV p. 227

Fisk plans to use the \$30 million as a basis for reestablishing confidence in Fisk's financial situation and as the start of a capital campaign aimed at raising \$120 million, and Fisk cannot raise \$120 million without the \$30 million. Tr. Vol. XV pp. 226, 227. President O'Leary testified that her experience tells her that Fisk can raise \$120 million in a capital campaign if Fisk has use of the full \$30 million. She based this conclusion upon her experience as a member of board at Morehouse College and as co-chair of the capital campaign fund which ultimately raised \$110 million. Tr. Vol. XV, pp. 79-80, 226-227. The Attorney General did not contest the fact that Fisk needed the \$30 million, but instead argued that Fisk's plan to raise over \$100 million was unrealistic. Tr. Vol. XVI pp. 703-704. Lee Barfield, an attorney and member of the Board of Directors of the Fisk Center for the Visual Arts, testified for the Attorney General. In his testimony, on cross-examination, he agreed that it "*takes money to make money.*" Tr. Vol. XVI 515. Mr. Barfield further agreed that a viable financial entity is needed that people are confident that they can support it and that it will be sustainable in order to raise the money. Tr. Vol. XVI p. 515. Mr. Barfield further agreed that people do not give money if the institution is going to close down the next year. Tr. Vol. XVI p. 516.

The ultimate decision with regard to the expenditure of funds will be made by Fisk's Board of Trustees, which is made up of leaders from the business community. Tr. Vol. XIV pp. 176-177.

Even with its financial problems, Fisk is today taking good care of the Stieglitz Collection. Tr. Vol. XVI p. 623. Today Fisk is one of the most respected small liberal arts universities in the county. Tr., Vol. XIV, pp. 82-83.

#### **Trial Exhibit 207**

The annual cost of exhibiting and preserving the Stieglitz Art Collection is \$205,000. Tr., Vol. XV, pp. 324-326. In response to Interrogatories submitted to Fisk by the Attorney General, Fisk provided to the Attorney General a five page chart with the heading "Fisk University Galleries." Tr. Ex. 207, Vol. VII, p. 997. The chart was attached to represent a portion of the answer to Interrogatory No. 3 which read:

*Identify in list format what Fisk would need (i.e., money, including how much is necessary; altered display schedule; altered art maintenance requirement; etc) to address each of the respective reasons compliance is impracticable or impossible listed in Interrogatory \_\_\_\_\_. Please identify what Fisk needs to address each issue separately as opposed to cumulatively.*

A copy of this response is attached as an exhibit to this brief.

The above described interrogatory was introduced at the trial as an exhibit to President O'Leary's testimony and identified as Exhibit 207. Significantly, the numbers in that exhibit do not represent the costs that Fisk would incur if the Fisk/Crystal Bridges Museum agreement is approved by the Court. Certain Fisk staff persons prepared the list and believed they were free to include anything they "*thought would be good to have.*" Tr. Vol. XIV p. 167. The title of "Fisk University Galleries" indicates that the list applies to more than just the Van Vechten Gallery where the Stieglitz Collection is exhibited. President O'Leary's unrebutted testimony follows:

*I want to make clear that the one, two, three, fourth grid that reads, "Fisk's Actual Expenses." are the expenses that we now incur and would subsequently incur; and remind the Court and everyone listening that I just earlier testified to the Alice Walton pledge, which is a million dollars, to get some of this done, and*

*to further say that the actual cost of the director of the museum is covered by a grant to Fisk University, as is the cost of the administrator.*

*So if you will go down into actual expenses, you will see the cost, and I was just sloppy not to strike this best practices list, but have to understand that I own this, but by no stretch of the imagination could anyone in the room presume that I was planning, as a part of the Crystal Bridges sharing agreement, to build new gallery space and to buy a fine arts building. That just stretches credulity, and certainly there was no budget to do so. Tr. Vol. XIV p. 172.*

Exhibit 207 provides in part as follows:

- The staff of the Van Vechten Gallery now consists of two persons: the curator and his assistant. The Best Practices Column proposes that the staff be increased to a total of 18 persons.
- This list of additional employees includes six persons identified as curators, in addition to the director. One is curator of African/Trial Art. There are only five such pieces in the Stieglitz Collection.
- One new employee is identified as the curator of Decorative Arts. There are no decorative arts in the Stieglitz Collection.
- The list includes an art transport vehicle. Under the Crystal Bridges Museum agreement, Crystal Bridges Museum will handle all moving of the art.
- The list includes five new exhibition galleries averaging 14,000 square feet each, built at a cost of \$1,400,000. Fisk has spent approximately \$882,000 over the past three years to upgrade and improve the Van Vechten Gallery to accommodate the Stieglitz Collection. Hazel O'Leary Dep., R. Vol. VI, p. 755
- Under the O'Keeffe Conditions, the Collection must be exhibited together in the same room. Ex. 7, Vol. I p. 7; Ex.13, Vol. I p. 17. It cannot be split among five galleries. If the Stieglitz



Collection were to be exhibited in one of these five new galleries, there would be enough room to have each piece of the Collection occupy 140 square feet.

The list totals approximately \$1.4 million of annual recurring costs and approximately \$3.7 million of initial capital costs. Tr. Vol. XV p. 345; Ex. 207. Under the agreement with Crystal Bridges Museum, Fisk would have the art on its campus for exhibition one-half of the time.

## ARGUMENTS

### Introduction

This action was remanded to the Chancery Court for two purposes: (i) to rule upon whether it has become “impracticable” for Fisk to comply with O’Keeffe’s conditions, and (ii) if so, to “*fashion a form of relief that most closely approximates Ms. O’Keeffe’s charitable intent.*” 312 S.W.3d at 20.

Faced with overwhelming and unrefuted evidence presented at trial, the Chancery Court found that compliance with O’Keeffe’s conditions was indeed impracticable in light of Fisk’s serious financial circumstances. In fashioning relief, the Chancery Court emphasized the one aspect of O’Keeffe’s intent that has been clear from the outset of this litigation and is beyond controversy—that O’Keeffe intended for Fisk to display the Collection—and noted that “[w]ithout some capital infusion, the viability of Fisk University is in jeopardy,” Mem.& Ord., Nov. 3, 2010, R. Vol. XXIII, p. 1770) and therefore, to realize O’Keeffe’s intent any solution must provide “*money for Fisk, the institution.*” R. Vol. XXIII, p. 1771.

In light of this finding, the Chancery Court rejected proposals made by the Attorney General, which were designed merely to defray the cost of maintaining the Collection until Fisk closed due to its financial circumstances, and approved a modified version of the Crystal Bridges Agreement, under which Fisk would receive \$30 million in exchange for a 50% sharing interest in the Collection.

But remarkably, notwithstanding its conclusion that any solution must provide “*money for Fisk, the institution,*” the Chancery Court cited a concern regarding “*monetizing*” the Collection and ruled that the majority of the \$30 million that was to be used to save Fisk would

instead be put out of reach of Fisk's Board and the income would be used exclusively to support maintenance of the Collection; Fisk would be left to try to save itself with \$10 million.

The Chancery Court's choice marks a profound error. Ten million dollars is not enough to restore Fisk to financial stability. The evidence is clear on that point. In an attempt to split the baby, the Chancery Court has sabotaged its own relief. If left to stand, the result of this ruling will be the bizarre spectacle of Fisk's descent into failure while the tens of millions of dollars paid to save it are held out of reach, cordoned off as part of an extravagant endowment that is orders of magnitude greater than anything conceivably necessary to maintain the Collection.

The Chancery Court did not advise the parties that it was considering a plan to lock off \$20 million of the \$30 million received under the Fisk/Crystal Bridges Agreement, and the issue therefore was not directly briefed or argued at the trial level. Nevertheless, the proof on which the trial court relies does not support its decision, and that decision constitutes an abuse of discretion under each of the four separate grounds identified in the case law. The decision is based upon a "clearly erroneous assessment of evidence," insofar as it concludes that \$10 million is enough to save Fisk and that a \$20 million endowment is somehow necessary to maintain the Collection; it reaches an "illogical conclusion," insofar as it finds that Fisk needs capital to stay afloat and display the Collection, but then prevents Fisk from accessing the very capital provided to keep it afloat; it "causes an injustice," by preventing Fisk from accessing the funding intended to keep it open to display the Collection; and it applies an "incorrect legal standard," in failing to acknowledge that the fact-specific *cy pres* doctrine requires the fashioning of such relief as is necessary—here, in the Chancery Court's own words, a "*capital infusion*"—to effectuate the donor's intent.

There is clearly a solution on the table that would allow the Collection to be displayed at Fisk half of the time, and preserve Nashville's oldest university. The Chancery Court adopted that solution with its right hand before gutting it with the left. The result under the Chancery Court's ruling, as well as under every alternative to the Fisk/Crystal Bridges Agreement that has arisen since this litigation began years ago, would be that the ability of Fisk to display the Collection could soon come to a permanent end. This Court should correct the error below and adopt the modified Crystal Bridges Agreement while there is still a chance to effectuate O'Keeffe's intent. The hour is late.

### **Standard of Review**

#### **Abuse of discretion**

The standard for review of the Court's decision is a procedural matter which is governed by Tennessee law as the forum state. Charles Hampton's A-1 Signs, Inc. v. American States Ins. Co., 225 S.W.3d 482 (Tenn. Ct. App. 2006). Under Tennessee law, the standard for review of a matter involving the discretion of the trial court is whether or not the decision was an abuse of discretion. See Eldridge v. Eldridge, 42 S.W.3d 82 (Tenn. 2001)

A trial court has abused its discretion if the court does any one of the following:

- (1) applies an incorrect legal standard;
- (2) reaches an illogical conclusion;
- (3) bases its decision on a clearly erroneous assessment of the evidence; or
- (4) employs reasoning that causes an injustice to the complaining party.

Bailey v. Blount County Board of Education, 303 S.W.3d 216 (Tenn. 2010).

## Compliance with remand order of the Court of Appeals

One of the controlling principles of our judicial system is that lower courts must abide by the orders of higher courts. State v. Irick, 906 S.W.2d 440, 443 (Tenn.1995). According to the Tennessee Supreme Court, the “*slightest deviation*” from this principle will “*disrupt and destroy the sanctity of the judicial process*” because “[t]here would be no finality or stability in the law and the court system would be chaotic in its operation and unstable and inconsistent in its decisions. Personal and property rights would be insecure and litigation would know no end.” Barger v. Brock, 535 S.W.2d 337, 341 (Tenn.1976) The trial court's sole responsibility is to carefully comply with directions in the appellate court's opinion. Raht v. Southern Ry. Co., 387 S.W.2d 781 (Tenn. 1965).

## THE CHANCERY COURT ABUSED ITS DISCRETION BY REQUIRING THAT \$20 MILLION OF THE \$30 MILLION TO BE PAID TO FISK BY THE CRYSTAL BRIDGES MUSEUM BE PLACED INTO A RESTRICTED AND INACCESSIBLE ENDOWMENT FUND WITH THE EARNINGS TO BE USED EXCLUSIVELY FOR THE COLLECTION

1. Limiting the amount of proceeds which Fisk will have discretion to use to \$10 million based on a conclusion by the Chancery Court that such amount is sufficient to solve Fisk's financial problems is an abuse of discretion which violates the remand order of the Court of Appeals.

The Chancery Court's rejection of the Attorney General's proposals, in favor of a modified Fisk/Crystal Bridges Museum proposal, was based upon the one aspect of O'Keeffe's intent that has been crystal clear from the beginning of this litigation and remains beyond controversy—that O'Keeffe intended for Fisk to display the Collection. As the Chancery Court explained in rejecting the Attorney General's proposal to transfer the Collection to the Frist Center:

*Although the donor's intent was to enable Nashville to have access to the Collection, the evidentiary record before the Court establishes that the donor was deliberate about where the*

*Collection was placed in Nashville. That deliberate placement was Fisk University. The evidentiary record is clear that without Fisk, Nashville would never have been the beneficiary of the Collection. The donor's connection to Nashville was Fisk University.*

*It would not be in keeping, then, with the donor's intent to keep the Collection in Nashville at the cost of sacrificing the existence of Fisk University. . . . Having the Collection in Nashville only half of the time and reducing Fisk's ownership to a half is not a perfect solution but it does keep Fisk afloat, thereby maintaining and holding true to the law's recognition of the donor's deliberate selection of Fisk for the art.*

Mem. & Ord., Sept. 14, 2010, R. Vol. XII, p. 1587. After the Attorney General made a second proposal that merely defrayed the cost of maintaining the Collection while Fisk was left to fail, the Chancery Court again explained:

*[T]he Court has found that a secondary, motivating factor of the O'Keeffe dispositional design of the Collection was its placement at Fisk. Thus, if Fisk were to close, it would frustrate a unique aspect of the O'Keeffe donation. The evidence at trial establishes that closure of Fisk is an imminent possibility. Without some capital infusion, the viability of Fisk University is in jeopardy. . . .*

*Thus, adopting either of the proposals of the Attorney General would unnecessarily frustrate the unique dispositional design of Ms. O'Keeffe's charitable gift. The Attorney General's proposals only take into account half of the problem in this case. The deficiency with the proposals is that they provide no money for Fisk, the institution.*

Nov. 3, 2010, R. Vol. XXIII, pp. 1770-1771.

The evidence in support of this conclusion is overwhelming, the basic fact is irrefutable and the Attorney General has not contested the point in briefing.<sup>1</sup>

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<sup>1</sup> The Chancery Court characterized O'Keeffe's intent that the Collection be displayed at Fisk as a "secondary" intent, or part of a "dispositional design," reflecting perhaps a concern on its part that it not go beyond the prior statement of this Court that O'Keeffe intended the Collection to be available to the public in "Nashville and the South." (See Nov. 3 Order at 7-8, 17, 21-22.) But such a concern is misplaced in this instance. The full extent of O'Keeffe's intent (or dispositional design) has never been before this Court. What this Court was previously called upon to examine was whether O'Keeffe possessed "general intent," rather than "specific intent." Although these

The Chancery Court also agreed that Fisk requires significant additional funding to remain open. In the Chancery Court's words, "[w]ithout some capital infusion, the viability of Fisk University is in jeopardy," see Nov. 3 Order, R. Vol. XIII p. 1770, and what is needed is "money for Fisk, the institution," R. Vol. XIII p. 1771. Indeed, it was in light of Fisk's financial circumstances that the Chancery Court concluded that it is impracticable for Fisk to comply with O'Keeffe's conditions.

If Fisk's financial situation forces its closure and it cannot exhibit the Collection, O'Keeffe's intent that the Collection be displayed at Fisk will be thwarted. Having decided that compliance with the Conditions is impracticable, the Chancery Court's direction from this Court was to "*fashion a form of relief that most closely approximates Ms. O'Keeffe's charitable intent.*" This is consistent with the New York *cy pres* statute which provides that the court may direct that the gift be administered in a manner free from any specific restrictions, limitations or directions so long as it "*will most effectively accomplish its [the gift's] general purposes.*"

The testimony in this case establishes that to remain open and display the Collection, Fisk needs the full \$30 million in unrestricted funds in order to form the basis on which Fisk can launch and carry out a major capital campaign. That campaign is intended to raise over \$100 million. This is considered feasible by Fisk because the \$30 million infusion will make it clear to the public and potential donors that Fisk's immediate threat of closure will not occur and Fisk will continue to operate. Even the Attorney General did not raise any objection to Fisk's need for \$30 million; he argued instead that it was unrealistic for Fisk to raise \$120 million.

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phrases contain the word "intent," the New York cases make clear that these terms of art actually signify an inquiry that is quite a bit narrower and more technical than the ordinary usage of "intent": whether the donor wished that a gift would revert, or instead continue as a charitable gift, in the event of impracticability. It was not necessary to consider the full contours of O'Keeffe's intent to resolve the general intent issue. Because the final element of the *cy pres* analysis has not come before the appellate court prior to this appeal, there has been no occasion for this Court to rule on the full extent of O'Keeffe's intent or dispositional design. Fisk notes, however, that although the issue was not before the Court for resolution, Judge Dinkins provided useful guidance in his concurrence, which the Chancery Court noted. (See Nov. 3 Order at 5.)

Notwithstanding that position, however, the only person with experience in raising funds for a college or university was Hazel O'Leary, who was confident that it could be done, presuming Fisk has the full \$30 million.

Unfortunately, having recognized that "*money for Fisk*" was necessary to effectuate O'Keeffe's intent that the Collection be displayed at Fisk (see Nov. 3 Order, R. Vol. XIII pp. 1770-1771), the Chancery Court nevertheless held that only \$10 million of the \$30 million capital infusion that Fisk would receive under the Fisk/Crystal Bridges proposal could be used to keep Fisk afloat. The rest would be held in a restricted endowment that Fisk could not access, income from which would be paid to Fisk solely to fund maintenance of the Collection and the study of art, and its obligations under the modified Crystal Bridges Agreement. The Chancery Court concluded that \$10 million is sufficient to enable Fisk to address its immediate debt and then plan how the University shall secure its future.

The Chancery Court's conclusion simply is not supported by the evidence. Ten million dollars is not enough to keep Fisk afloat. The entirety of the Chancery Court's analysis as to why \$10 million should be sufficient is contained in the following few sentences:

*The Court's order provides that \$10 million of the sale proceeds shall be paid to Fisk for it to spend in its discretion. This provision of the order derives from the proof Fisk provided during the August 2010 trial on its financial condition. As noted above, that financial condition includes that Fisk has zero dollars in unrestricted endowment, all of its buildings are mortgaged, its bills total \$2 million, it runs a \$2 million deficit annually, and its endowment totals only \$3.7 million. The \$10 million will enable Fisk to address its immediate debt and, with that clearance, plan how the University shall secure its future.*

(See Nov. 3 Order, R. Vol. XIII p. 1778.)

Addressing the central issue of fact concerning the proposed relief in this action in such a conclusory fashion raises fundamental questions about the soundness of the Chancery Court's



approach to the endowment issue, as does the fact that the Chancery Court sprung this relief upon the parties without warning or an opportunity for response.

In any event, the notion that \$10 million is enough to stave off Fisk's financial crisis is utterly unrealistic and finds absolutely no support in the evidence submitted at trial. According to the most recent financial statements for the year ended June 30, 2009, Fisk had \$3.8 million of accounts payable, \$4.5 million of bank debt, \$8.7 million of bond debt, and a loss of approximately \$2.8 million. There appears to be no way in which Fisk can even "*address its immediate debt*" with only \$10 million, much less step back from the financial brink decisively enough to begin a credible capital campaign.

The Chancery Court does not attempt to address Fisk's conclusion that \$30 million is needed to restore public and donor confidence in Fisk. Its conclusion is an egregious mistake and a clearly erroneous assessment of the evidence. Ultimately, the result of this decision would be to see Fisk along the road to closing, and O'Keeffe's intent that Fisk display the Collection would be thwarted. In addition, the remand order of the Court of Appeals provided that if the Chancery Court found the compliance with any of the specific conditions to be impracticable, the lower court was required to "*fashion a form of relief that most closely approximates Ms. O'Keeffe's charitable intent.*" As is clear from the above arguments, the \$10 million allocation to Fisk is not sufficient to provide Fisk "*relief*" that would allow it to carry out O'Keeffe's intent that it display the Collection.

**2. The Chancery Court abused its discretion by limiting the amount of the funds which Fisk can use to solve its financial problems to \$10 million because of the Chancery Court's concern regarding "monetization" of the Collection.**

The Chancery Court's decision to limit to \$10 million the amount available to Fisk to solve its financial problems was based upon a concern about "monetizing" the Collection. That

concern is misplaced, and leads to a result that is illogical even on its own terms. The Chancery Court explained its concern as follows:

*Obviously Fisk's proposal would provide the much needed capital which it claims would ensure the viability of the University as a whole. But, as this Court has noted in [prior orders], merely seeking to 'monetize' this Collection under the guise of cy pres relief would ultimately frustrate the whole purpose of the cy pres doctrine. Cy Pres will not allow this Court to simply convert charitable gifts into an expendable 'asset' in order to maximize its utility to the donor. The policy of granting cy pres relief is the impracticability and impossibility of adhering to the original general charitable intent of the donor.*

Nov. 3 Order R. Vol. XIII p. 1773.

Even if understandable in the abstract, the Chancery Court's analysis collapses when applied to the particular fact situation before the Court here. A concern that Fisk was merely "*converting the charitable gift into an expendable asset*" would be understandable if the proposal before the Chancery Court were for Fisk to "cash out" by selling the Collection outright or breaking it apart—i.e., to give away the charitable gift and thwart the donor's intent of display at Fisk, in exchange for cash. That would be "*converting the artwork into money.*" But the facts presented here are quite different: the money would not thwart or replace the charitable gift; rather, money is the vital element to a continuation of the donor's intent, under the less-than-ideal circumstances in which Fisk finds itself. Because of the money provided under a modified Crystal Bridges Agreement—and only because of that money—the Collection would continue to be displayed at Fisk half of the time, rather than not at all.

There is simply no way around the fact that, as the Chancery Court put it, "[w]ithout some capital infusion, the viability of Fisk University is in jeopardy," and with it, O'Keeffe's intent that the Collection be displayed at Fisk. See Nov. 3 Order, R. Vol. XIII p. 1770. What is needed here to carry out the donor's intent is, in the Chancery Court's words, "*money for Fisk, the institution,*" R. Vol. XIII p. 1771. *Cy pres* doctrine is fact-specific and flexible enough to

allow the particular relief actually necessary to effectuate the donor's intent under the specific circumstances presented in each case. See In re Heckscher's Trust, 131 N.Y.S. 2d 191, 194 (N.Y. Sup. 1954) ("*[n]o general rule can be enunciated as to the manner in which the cy pres doctrine will be applied . . . [e]ach case must necessarily depend upon its own peculiar circumstances*"). Accordingly, the relief ordered in cy pres cases is quite variable. See, e.g., In re Estate of Othmer, 815 N.Y.S. 2d 444 (N.Y. Sur. 2006) (allowing use of charitable funds for purposes not permitted under donor's restrictions, where literal compliance with restrictions was impracticable due to institution's financial condition); Matter of Wilson's Estate, 87 A.D. 2d 98 (3d Dept. 1982), aff'd 59 N.Y. 2d 461 (1983) (reforming charitable trust to function without involvement of school district after district ceased participation under threat of lawsuit).

Moreover, there is nothing improper about the provision of funding in agreements approved under New York's cy pres doctrine. For example, in In re Board of Trustees of Huntington Free Library and Reading Room, 771 N.Y.S. 2d 69 (N.Y. App. Div. 2004), New York's Appellate Division found that a charitable library's inability to meet its custodial responsibilities for a charitably-donated book collection justified approval, under the cy pres doctrine, of an agreement under which the collection was transferred to another institution in consideration for \$2.5 million essential to the library's continued existence. The Chancery Court has noted that in In re Huntington, the donor made explicit an intent that the institution continue in existence, whereas here the Chancery Court concludes that there is not evidence that O'Keeffe intended for the Collection to be used to "*perpetuate Fisk's existence*." See Nov. 3 Order, R. Vol. XIII p. 1771; Aug. 20 Order, R. Vol. X p. 1314. However, as the Chancery Court has also observed, at the time of the donation "*Fisk was not on the brink of closing . . . [and] the circumstances have changed with Fisk's current financial failure*." See Sept. 14 Order, R. Vol.

XII p. 1587. What is clear is that O’Keeffe’s choice of Fisk to display the Collection was part of her intent. For Fisk to display the Collection, it must exist. There is no way around that fact.

Indeed, the Chancery Court’s handling of its concern regarding “monetization” is illogical even on its own terms. The Chancery Court would allow \$10 million in funding to be received by Fisk. There is no explanation as to why \$10 million does not constitute “monetization,” but \$30 million does. That is, even if the concern about “monetization” had any place here (which it does not, for the reasons explained above), the Chancery Court’s ruling is that Fisk may receive capital as part of the relief, but only to the extent that such capital is not enough to effectuate O’Keeffe’s intent. This result makes no sense.

**3. The establishment of a restricted endowment of \$20 million on the basis that such amount is necessary for the exhibition and utilization of the Collection for the study of art is an abuse of discretion.**

Putting the staggering sum of \$20 million into an endowment to “maintain” this Collection is truly wasteful and entirely unsupported by the evidence submitted at trial. President O’Leary testified that the annual direct cost for the care and exhibition of the Stieglitz Collection is about \$205,000. She also testified that the \$1 million endowment being established by Alice Walton in connection with the Crystal Bridges Museum transaction is adequate to pay for any additional costs associated with operating under the sharing arrangement with Crystal Bridges Museum. The evidence establishes that Fisk has done a good job of exhibiting and caring for the Collection. Fisk has spent approximately \$882,000 over the past three years to improve and upgrade the Van Vechten Gallery which houses the Collection. Indeed, even the Attorney General’s expert witness regarding the Stieglitz Collection agrees. Dr. William Eiland, director of the Georgia Museum of Art at the University of Georgia gave the following testimony during cross-examination:

Q. You came in [to see the Stieglitz Collection] for what purpose?

A. [Dr. Eiland]. To see the collection because I hadn't seen it since it had been put back into the Van Vechten.

Q. How did it look?

A. It looks pretty good.

Q. Yeah, it does. They're taking pretty good care of it out there, aren't they?

A. They are.

Tr. Vol. XVI p. 623.

The Court disregarded this testimony and found instead that the annual costs of the Collection to Fisk would be approximately \$1.3 million. The Chancery Court interprets the language of the Court of Appeals that the charitable intent of making the art “*available to the public*” in Nashville and the South “*to promote the general study of art*” requires Fisk to implement, at great cost, a major marketing effort with regard to the Collection, including summer training for ten guides, a program of “outreach for Nashville” and dedicated fundraising. Supp. Mem. & Ord., R. Vol. XIII p. 1787.

The Collection is today “*available to the public*,” and anyone in Nashville or elsewhere can come to the gallery and study the art. Tr. p. 623. Nothing in making the art available to the public for study implies that Fisk must undertake a major effort to promote interest in the Collection and actively promote visitations. Those activities might be beneficial, but are not required.

Yet the Court wants more. The Court took the wish list prepared by staff persons at Fisk and found it to be necessary for Fisk to implement. As the un rebutted testimony of President Hazel O’Leary regarding this exhibit explains, the numbers in Exhibit 207 do not represent the costs that Fisk would incur if the Fisk/Crystal Bridges Museum agreement is approved by the

Court. Certain Fisk staff persons prepared the list and believed they were free to include anything they thought would be good to have. President O'Leary further testified that it is the amounts in the column entitled "Actual Expenses" which actually represent the current costs and the costs it will subsequently incur for the Collection. She testified further that money from the Alice Walton Pledge and a grant to the University which covers the cost of the administrator of the Collection can be used for these costs. Tr., Vol. XIV, p. 172.

If the wish list costs program were implemented, it means Fisk would hire six new curators including two curators of education, a docent coordinator, a graphics/exhibitions designer, a grant writer, and editor/publicist and membership manager. Fisk would need space for these additional persons and the wish list calls for new facilities at \$290,000. It calls for new staff office space at \$830,000, an art conservation lab at \$130,000 and new galleries at \$1,400,000 and on and on.

The Stieglitz Collection is made up of 101 pieces of art exhibited in a space of approximately 1,600 square feet. Ex. 70, Vol. I, p. 133. In keeping with the conditions, the collection is displayed all together in a room.<sup>2</sup>

Finding that the list is required to be put into effect in order to comply with industry best practices is punitive and arbitrary and capricious on its face.

The list of annual recurring expenses calls for the following:

1. The addition of 18 employees to work in the gallery with the Stieglitz Collection. There are now two employees.

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<sup>2</sup> The Collection's art pieces are on average small and do not require a significant amount of gallery space. The Collection is made up of seven sculptural pieces, the largest of which is an African Mask measuring 24.5 inches tall. The remaining 94 pieces are paintings, watercolors, etchings, lithographs, drawings, photographs and similar media. Of these 94 pieces of art, the average size is 15.5" by 15." Of the total, 47 are smaller than one foot square (144 sq. inches) and only five are larger than three square feet (1298 sq. inches) and none are larger than four feet square. The largest piece is 52.25" by 38.375" and the smallest is 3.5" by 3.375". Ex. 70, Vol. I, pp. 133 *et al.*

2. These 18 people include an Associate Curator of African/Tribal art, (at \$64,000) despite the fact there are only five such pieces in the Stieglitz Collection.<sup>3</sup>

3. These 18 people include an Associate Curator of Decorative Arts (at \$64,000) despite the fact that the Stieglitz Collection contains no works which qualify as decorative arts.<sup>4</sup>

4. These 18 people include a Collection Registrar (at \$57,600) who would keep records of the collection despite the fact that the 101 pieces were long ago catalogued and the necessary records prepared on all of these pieces.

5. These 18 people include "art handlers" although it is not clear what those persons would do with a collection which remains hung substantially all the time. All expense necessary to move the art back and forth to Arkansas are to be paid by the Arkansas museum.

6. To house this incredible addition of people, the staff proposes five new art galleries each containing 14,300 square feet (a total of 71,500 square feet) (at a cost of \$1,400,000) even though the current gallery is only 1600 square feet and the art collection is conditioned on it being in only one gallery.<sup>5</sup>

7. Staff proposes 14 new offices with each one being 22' by 27' at a cost of \$830,000.

8. Staff proposes 25 new computers (more than the number of persons added) at a price of \$2,500 each.

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<sup>3</sup> Two tribal masks, a female figure, a container for relics and a flywhisk. Ex. 70, Vol. I, p. 136.

<sup>4</sup> Merriam-Webster's dictionary defines decorative arts as "art that is concerned primarily with the creation of useful items (as furniture, ceramics, or textiles)". By this definition, there are no decorative arts in the Stieglitz Collection.

<sup>5</sup> The "wish list" lists additional space needs at a total of approximately 92,700 square feet, which is 60 times more space than that in the gallery which houses the Collection.

9. Staff proposes an art transport vehicle at \$30,000 although it is not clear what it would have to transport on a routine basis.

10. There is the additional consideration that the collection will not be at Fisk half the time and there will be little or nothing for these employees to do relative to the collection.

As President O'Leary's un rebutted testimony makes clear, this staff wish list of expenditures is in no way necessary to implement in order to maintain the Collection, and was not something that President O'Leary is or was considering implementing.

The Court also ruled that Dr. Eiland's testimony about the University of Georgia Museum corroborates "*that an annual budget of \$1 million or less<sup>6</sup> for promotion and education. . . is an appropriate amount.*" Nov. 9 Ord., R. Vol. XXIII, p. 1790. An examination of Dr. Eiland's testimony shows no such corroboration.

There are four references to the cost of operating an art museum in Eiland's testimony, and each refers to the Georgia Museum of Art. Eiland testified that Georgia Museum of Art has 9,500 works of art for which it must provide care and conservation Tr., Vol. XVI, p. 596. The four references are:

1. The amount of the annual budget of the Georgia Museum of Art (\$3 million). Tr. Vol. XVI p. 621.
2. The annual cost of care and conservation of the Georgia Museum of Art collection and for programming from the Museum (\$500 to \$750 thousand) Tr. Vol. XVI p. 621.

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<sup>6</sup> "1 million or less" is a nonsensical phrase in the context of the sentence in which it appears. "Or less" would include the amount currently spent by Fisk to care for the collection. Fisk presumes the Chancery Court meant to write "1 million more or less" (meaning approximately \$1 million) or "\$1 million or more."



3. The endowment of the University of Georgia (\$469 million) Tr. Vol. XVI p. 633.
4. The endowment of the Georgia Museum of Art (\$5 to \$6 million) Tr. Vol. XVI p. 634.

Not only does the testimony not corroborate the Court's conclusion, it proves just the opposite. The Chancery Court concluded that Fisk should spend approximately \$1 million a year on care and conservation and educational programming, while the Georgia Museum spends less than that amount (\$500 to \$750 thousand) even though its collection is nearly 100 times larger (9,500 compared to 101 art works).

The Attorney General's own witness acknowledges that Fisk is currently "doing a good job" of displaying the Collection. The evidence simply does not support the notion that a massive \$20 million endowment and extraordinary new staffing and infrastructure outlays are necessary to carry out O'Keeffe's intent. Where the funding is actually needed is to keep Fisk afloat so that it can display the Collection.

## CONCLUSION


What has plainly happened in this case is that the Chancery Court has concluded that the unchallenged proof establishes that without a large infusion of cash Fisk will close and will not be able to exhibit the Collection. The Court, however, in spite of that conclusion has allocated only \$10 million of the \$30 million payment to Fisk for its use to solve its financial problems. In doing so, it has allocated vastly too much money to an endowment for maintenance of the Collection and too little money to Fisk for it to remain open to actually display the Collection.

In the final order which is the subject of this appeal, the Chancery Court states that its previous “solution” was simply to give the Collection to the Georgia O’Keeffe Museum in Santa Fe, New Mexico, where it would reside, 1,200 miles from Nashville, but that solution was struck down by the Court of Appeals. Nov. 3, 2010 Mem. & Ord., p. 1750. Permitting Fisk to have the discretionary use of only \$10 million of the \$30 million is not materially better, as it, like the Museum’s proposal, will lead to the frustration of O’Keeffe’s intent that Fisk display the Collection.

The Chancery Court has missed its last chance to order relief that would effectuate O’Keeffe’s intent that the Collection be displayed at Fisk, albeit for one-half of the time rather than not at all. That solution remains on the table for this Court to approve. Without a decision by the Court of Appeals to remove the requirement that only \$10 million be used by Fisk to remedy its financial situation, this Court’s prior decision ordering relief that most effectively accomplishes O’Keeffe’s intent cannot be turned into a reality.

Respectfully submitted,

**BONE McALLESTER NORTON PLLC**

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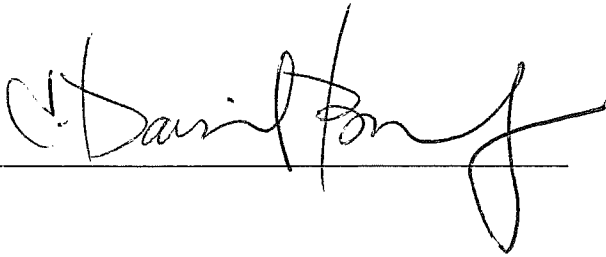
*Counsel for Fisk University*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Brief of Appellant was served by First Class Mail, postage prepaid, upon the following this the 7<sup>th</sup> day of April, 2010.

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A handwritten signature in black ink, appearing to read "David H. Helou", is written over a horizontal line.

## APPENDIX

#207

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MAR 08 2011

Clerk of the Courts



## Fisk University Galleries

Interrogatories:

3. Identify in list format what Fisk would need (i.e., money, including how much is necessary; altered display schedule; altered art maintenance requirement; etc) to address each of the respective reasons compliance is impracticable or impossible listed in Interrogatory \_\_\_\_\_. Please identify what Fisk needs to address each issue separately as opposed to cumulatively.

Items	Best Practices Costs	Fisk Actual Expenses	Display Timeline	Preferred/Propriate Display Timeline	Industry/Standard Maintenance Schedule	Fisk Maintenance Schedule
Stieglitz Collection						
Prohibits proper conservation of objects. Should be shown on rotation schedule		0.00	Permanent	*See Below	3-4 Month Rotation	As Needed
Conservation: (budget to cover possible issues with works in various media: paper, paintings, photographs, sculpture, etc.) Conservation specialist needed for works in various media for Stieglitz Collection	\$20,000.00/yr	TBD	N/A	N/A	N/A	N/A
Paper Conservator Painting Conservator Photographs Conservator African artifacts conservator						
Additional Storage Space for objects - works on paper, paintings, when not being exhibited	\$10,000.00	0.00	N/A	N/A	N/A	N/A
Acid Free- Archival Storage Boxes for works on paper	5,000.00	0.00	N/A	N/A	N/A	N/A
HVAC & Fire Prevention Systems	See Below					
Other Costs	N/A	N/A				N/A
Salaries (includes 28% fringes)						N/A
Director of Museum	\$108,800	\$85,000	N/A	N/A	N/A	N/A
Administrative Assistant to the Director	\$44,800	\$35,840	N/A	N/A	N/A	N/A
Curator of American & European	\$83,200	0.00	N/A	N/A	N/A	N/A

EXHIBIT # 207

FILE DATE

CASE # 05-2994-1

BY:

AGI2-

1997

Item	Items	Best Practices Costs	Fisk Actual Expenses	Display Timeline	Preferred/Proprietary Display Timeline	Industry/Standard Maintenance Schedule	Fisk Maintenance Schedule
Art	Associate Curator of African Tribal Art	\$64,000	0.00	N/A	N/A	N/A	N/A
Art	Associate Curator of Decorative Arts	\$64,000	0.00	N/A	N/A	N/A	N/A
Art	Associate Curator Prints, Drawings & Photographs	\$44,800	0.00	N/A	N/A	N/A	N/A
Education	Curator of Education	\$64,000	0.00	N/A	N/A	N/A	N/A
Education	Associate Curator of Education	\$58,411	0.00	N/A	N/A	N/A	N/A
Docent coordinator	Docent coordinator	\$32,000	0.00	N/A	N/A	N/A	N/A
Collection Registrar	Collection Registrar	\$67,600	0.00	N/A	N/A	N/A	N/A
Collection Preparator	Collection Preparator	\$44,800	0.00	N/A	N/A	N/A	N/A
Associate Preparator	Associate Preparator	\$34,560	0.00	N/A	N/A	N/A	N/A
Art Handlers	Art Handlers	\$34,560	0.00	N/A	N/A	N/A	N/A
Security Personnel	Security Personnel	\$26,600	0.00	N/A	N/A	N/A	N/A
Conservator/Conservation Consultant	Conservator/Conservation Consultant	\$64,000	0.00	N/A	N/A	N/A	N/A
Administrative Assistant	Administrative Assistant	\$32,000	0.00	N/A	N/A	N/A	N/A
Graphic Exhibitions Designer	Graphic Exhibitions Designer	\$51,200	0.00	N/A	N/A	N/A	N/A
Grant Writer	Grant Writer	\$51,200	0.00	N/A	N/A	N/A	N/A
Editor/Publisher	Editor/Publisher	\$64,000	0.00	N/A	N/A	N/A	N/A
Membership Services Manager	Membership Services Manager	\$60,160	0.00	N/A	N/A	N/A	N/A
Facility Needs (\$100/sq ft) (@ \$290/sq ft.)	Facility Needs (\$100/sq ft) (@ \$290/sq ft.)	\$290,000.00	0.00	N/A	N/A	N/A	N/A
Staff Office Space (14 Offices, average size 22' x 27')	Staff Office Space (14 Offices, average size 22' x 27')	\$830,000.00	xxx	N/A	N/A	N/A	N/A
Art Conservation lab (2 - Rooms, 30' x 45')	Art Conservation lab (2 - Rooms, 30' x 45')	\$130,000.00	0.00	N/A	N/A	N/A	N/A
Classroom spaces (2 - 50' x 30')	Classroom spaces (2 - 50' x 30')	\$90,000.00		N/A	N/A	N/A	N/A
Art Storage (expanding rack storage shelves for 3D Objects) (40' x 65')	Art Storage (expanding rack storage shelves for 3D Objects) (40' x 65')	\$260,000.00	0.00	N/A	N/A	N/A	N/A

egilz Collection: impracticable conditions

Items:

Items	Best Practices Costs	Fisk Actual Expenses	Display Timeline	Preferred/Up appropriate Display Timeline	Industry/ Standard Maintenance Schedule	Fisk Maintenance Schedule
Exhibition prep work space (45' x 65')	\$295,500.00	xxx	N/A	N/A	N/A	N/A
Personal Computers (26) @ \$2500/ea	\$65,000.00	7500.00	N/A	N/A	N/A	N/A
Photocopy machines (2)	\$4000.00	0.00	N/A	N/A	N/A	N/A
Office Supplies (paper, stationary, print inks, etc.)			N/A	N/A	N/A	N/A
Publication quality laser printers (2) @ \$800/ea	\$1600.00	0.00	N/A	N/A	N/A	N/A
Office Furniture (desk chairs, etc.)	\$40,000.00	xxx	N/A	N/A	N/A	N/A
Personal laser printers (5) @ \$180/ea	\$900.00	0.00	N/A	N/A	N/A	N/A
Record Storage (file cabinets) 25 (2-drawer) @ \$100/ea	\$2,500.00	300.00	N/A	N/A	N/A	N/A
Record Storage (file cabinets) 15 (4-drawer) @ \$900.00	\$13,500.00	2400.00	N/A	N/A	N/A	N/A
Utility service cars 6 @ 120/ea	\$720.00	120.00	N/A	N/A	N/A	N/A
Art installation & conservation materials			N/A	N/A	N/A	N/A
Lab Equipment (Conservation lab, sinks, easels, luminaires, UV lanterns, spotting tables, suction tables, washing equipment, etc.)	\$25,000.00	0.00	N/A	N/A	N/A	N/A
Art transport vehicle (Delivery Van, Small Moving Truck with covered storage)	\$30,000.00	0.00	N/A	N/A	N/A	N/A
Research library (35' x 40')	\$140,000.00	0.00	N/A	N/A	N/A	N/A
Exhibition galleries (5 - average size: 110' x 130')	\$1,430,000.00		N/A	N/A	N/A	N/A
Stieglitz Collection Catalogue (Color Reproductions, Complete Collection)	\$30,000.00	0.00	N/A	N/A	N/A	N/A
Docent Education/ Training Course (Course held bi-annually during Summer semester (10 docents))	\$10,000.00/yr		N/A	N/A	N/A	N/A
Exhibition Signage			N/A	N/A	N/A	N/A
1 - Didactic signage (32" x 40" silk screened board)	\$850.00	0.00	N/A	N/A	N/A	N/A
8 - Medium Artists bio labels (17" x 11" w)			N/A	N/A	N/A	N/A
101 - Wall labels 3" H x 5" W			N/A	N/A	N/A	N/A
Utilities						
Gallery Maintenance	\$65,362.77/yr	TBD				
Lighting	\$200,000.00/yr					
Painting						
Floors						
HAV (Heating Air and Ventilation)						
Structural/Roof Eaves, Windows, etc.)						

1600

2021  
1,300



Digit Collection/Imprecise Conditions	Items	Best Practices Costs	Fisk Actual Expenses	Display Timeline	Preferred/Propriate Display Timeline	Industry/Standard Maintenance Schedule	Fisk Maintenance Schedule
	Plumbing Electrical Grounds						